

**REMARKS**

Claims 1-20 and 22 are pending. No new matter has been added by way of the present submission. For instance, claims 4 and 6 have been amended to specifically refer to SEQ ID NO: 6 and SEQ ID NO: 8, respectively. Support for these sequences can be found in the originally filed Sequence Listing as well as the present specification at, for example, Example 27(2), see pages 120-121. Additionally, SEQ ID NOS: 6 and 8 are the same as SEQ ID NOS: 6 and 8 in PCT/JP97/03041. New claim 22 is directed to the nucleotide sequence of SEQ ID NO:8. Accordingly, no new matter has been added.

In view of the following remarks Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

**Issue with Respect to Priority**

The Examiner has indicated that priority for the present claims is accorded that of the filing date of parent application 09/262,856, filed on March 4, 1999. However, the Examiner indicates that there is no support for an isolated nucleic acid in PCT/JP97/03041, filed August 29, 1997. Applicants respectfully disagree with the Examiner. That is, as discussed above, SEQ ID NOS: 6 and 8 are fully supported by SEQ ID NOS: 6 and 8 of PCT/JP97/03041. The Examiner is therefore requested to acknowledge Applicants claim of priority.

Issues Under 35 U.S.C. § 112, First Paragraph

The Examiner has rejected claims 4 and 6 under 35 U.S.C. §112, first paragraph, for the reasons recited at pages 3-7 of the outstanding Office Action. Applicants respectfully traverse.

The Examiner has presented a written description and enablement rejection relating to claims 4 and 6. However, Applicants respectfully submit that the present claims fully satisfy the requirements of 35 U.S.C. § 112, first paragraph.

For instance, claim 4 relates to an isolated nucleic acid encoding a fungal antigen which is an antigenic protein having a vaccine activity or an allergen activity originating from *Candida albicans*, wherein said antigenic protein comprises the amino acid sequence as shown by SEQ ID NO:6, and has a molecular weight of about 25,000 Daltons as determined by SDS-PAGE under reduced conditions.

Also, claim 6 is directed to an isolated nucleic acid encoding a fungal antigen which originates from the genus *Candida* and has a molecular weight of about 25,000 Daltons and has a vaccine activity or an allergen activity, wherein said nucleic acid hybridizes to the complete complement of SEQ ID NO:8 in 6 x SSC, wherein 1x SSC indicates 0.15 M NaCl, 0.015 M sodium citrate, and pH 7.0, containing 0.5% SDS, 0.1% bovine serum albumin (BSA), 0.1% polyvinyl pyrrolidone, 0.1% Ficoll 400, and 0.01% denatured salmon sperm DNA at 50°C; followed by washing initially at 37°C in 2X SSC containing 0.5% SDS and changing the SSC concentration to 0.1X SSC and the SSC temperature to 50°C.

The present specification, at pages 120-121 (Example 27(2)) explains the method used to isolate the DNA encoding the antigenic protein having a molecular weight of about 25kDa. By

using the amino acid sequence of SEQ ID NO:2, oligonucleotide primers were designed for PCR. After obtaining the cDNA, conducting a two-step PCR and cloning of the amplified DNA, a nucleotide sequence was determined. This was the nucleotide sequence according to SEQ ID NO:8. The amino acid sequence deduced to be encoded by SEQ ID NO:8 is that of SEQ ID NO:6. An N-terminal portion of SEQ ID NO:6 was found to match the amino acid sequence determined from the 25kDa protein.

This is the subject matter of current claims 4 and 6 (and new claim 22). Claim 6, although reciting hybridization language, includes both stringent conditions for hybridization and a requirement that the nucleic acid hybridize to the complete complement of SEQ ID NO:8. Further, the activity of the protein encoded thereby is recited. As such, Applicants submit that the presently claimed subject matter is fully supported by the present specification and thus, sufficient written description exists. That is, those of skill in the art would understand that Applicants were in possession of the presently claimed subject matter at the time of filing the present application.

Further, Applicants respectfully submit that those of skill in the art are fully able to make and use the presently claimed subject matter without undue experimentation. As explained above, the preparation of the presently claimed subject matter is fully laid out in the specification. Based upon this information, and the knowledge in the art, Applicants respectfully submit that those of skill in the art, without undue experimentation, would be able to make and use the presently claimed subject matter.

In summary, Applicants respectfully submit that the present claimed fully satisfy the requirements of 35 U.S.C. §112, first paragraph. Accordingly, the Examiner is respectfully requested to withdraw this rejection and allow the currently pending claims.

Issues Under 35 U.S.C. § 102(b)

The Examiner has maintained the rejection of claims 4 and 6 under 35 U.S.C. § 102(b) as being anticipated by Buckley. Applicants respectfully traverse.

The Examiner has asserted that Buckley discloses a DNA which reads on the present invention. Applicants respectfully disagree. Buckley fails to suggest or disclose the subject matter of currently claims 4 and 6. That is, Buckley fails to suggest or disclose current SEQ ID NO: 6 or SEQ ID NO:8. As such, there exists no anticipation of the present claims based upon Buckley.

Issues Under 35 U.S.C. § 102(a) and § 102(e)

The Examiner has also rejected claims 4 and 6 under 35 U.S.C. § 102(a) as being anticipated by Rhei et al., Database GenEmbl. Accession number AF031478 (Biochim. Biophys. Acta 1426(3), 409-419 (1999)). Further, the Examiner has rejected claims 4 and 6 under 35 U.S.C. § 102(e) as being anticipated by Weinstock. Applicants respectfully traverse each of these rejections.

The present application claims the benefit of priority of PCT/JP97/03041, filed August 29, 1997. Moreover, the present claims are fully supported by PCT/JP97/03041 as discussed above. Accordingly, the Examiner must accord Applicants the benefit of the August 29, 1997

filing date of PCT/JP97/03041. However, Rhei published in 1999 and Weinstock was filed in the United States on February 12, 1999. Once properly accorded the benefit of the filing date of PCT/JP97/03041, neither Rehi nor Weinstock remains as valid prior art. Accordingly, these rejections are moot. Reconsideration and withdrawal thereof are respectfully requested.


In summary, Applicants respectfully submit that the present claims define subject matter that is patentable over the cited art. Accordingly, the Examiner is respectfully requested to withdraw all rejections and allow the currently pending claims.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Craig A. McRobbie (Reg. No. 42,874) at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: September 9, 2005

Respectfully submitted,

By  #42,874

Marc S. Weiner  
Registration No.: 32,181  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Rd.  
Suite 100 East  
P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorney for Applicant